

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF**

75-1402

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To be argued by
LAWRENCE K. FEITELL

In The
United States Court of Appeals
For The Second Circuit

UNITED STATES OF AMERICA,

Appellee,

vs.

CHARLES WILLIAM CAMERON,

Appellant.

BRIEF FOR APPELLANT

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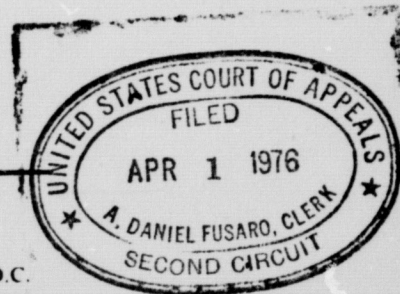


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UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

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UNITED STATES OF AMERICA,

Appellee,

-against-

75-1402

CHARLES WILLIAM CAMERON,

Appellant.

- - - - -X

STATEMENT OF THE CASE

This is an appeal by Charles William Cameron from his conviction for Conspiracy on Count I of the indictment [21 U.S.C. §§ 841 (a) (1) and 841 (b) (1) (A)]. While the indictment set forth various substantive or 'telephone' counts, appellant Cameron was not charged with any of these. On December 19, 1975, Judge MISHLER sentenced appellant to a term of imprisonment for eight

(8) years, a special parole term of five (5) years, and a \$5,000. fine (Cameron's Appendix, p. 15a). Appellant is presently on bail pending determination of this appeal.

Appellant's contentions on appeal relate mainly to the admissibility of proof of a police station interrogation which was conducted after he had been indicted in the instant case (Points I & II). The facts relating to this particular point are set forth immediately below. Insofar as the evidence against appellant at the trial is concerned, we urge that these were barely legally sufficient. An outline of this proof is set forth in Point I in order to convey the extent to which evidentiary rulings denying our motions to suppress became crucial in what we contend was a very close case on the facts.

Point III of our brief takes up the unique question of the admissibility of proof of non-filing of federal income tax returns by appellant for the years 1969-74. This proof was offered, over objection, as

tending to show appellant's membership in the narcotics conspiracy.

In Point IV, we adopt all Points raised by other counsel in their briefs insofar as they are relevant. Under this heading, we mean particularly to preserve our objections as noted in our pre-trial motion papers and during the course of a suppression hearing directed against the wiretapping which occurred in this case.

THE MOTION TO SUPPRESS CAMERON'S
TAPE RECORDED INTERVIEW WHICH
WAS CONDUCTED AFTER HIS INDICT-
MENT

The Testimony At The Hearing

A. THE GRAND JURY INVESTIGATION AND
INDICTMENT OF CAMERON - EVENTS
WHICH PRECEDED HIS ABDUCTION.

The appellant Cameron, although a distinguished college graduate with impressive undergraduate credentials from a Southern university, was by early 1975 scheduled to suffer his third serious arrest for narcotics traffic.* Unbeknownst to Cameron - who was then on bail pending appeal from a 1974 drug conviction in the New York State

* In 1973 Cameron was indicted in the District of Columbia; in 1971 Cameron was indicted in New York County.

Supreme Court - he had been indicted by a Grand Jury sitting in the Eastern District of New York which, since 1971, had been primarily engaged in investigating the activities of a major drug violator - Frank Mathews, as well as the doings of Mathews' friends and associates among whom Cameron was numbered. (P.O. Garay, 414-5, 418).^{*} On January 29, 1975, the Eastern District Grand Jury filed its indictment against Mathews (who had already jumped bail in mid-1973), his 'wife' Barbara Hinton, and approximately a dozen other drug violators, including appellant Cameron, who were claimed to be distribution confederates of the long since missing Mathews (Agent Mulhearn, 25-6; P.O. Garay, 420). The

^{*}References are to the pages of the typewritten minutes which comprise the hearing conducted during the trial on Cameron's motion to suppress the statements made by him in a police stationhouse on February 7, 1975 - after his indictment in this case but prior to the unsealing of such indictment on February 20, 1975.

indictment, however, was kept sealed and the arrests in the case did not get under way until on or about February 20, 1975 (Agt. Mulhearn, 26, 43; P.O. Garay, 382-4; see endorsements on Docket).^{*}

Cameron had been under scrutiny by Task Force agents since mid-1972 and by November, 1974, the officers of the Joint Task Force knew that Cameron was soon to be indicted (Garay, 416, 418-9; Mulhearn, 20, 25-31). The arrest of Cameron under the sealed indictment, however, did not take place, for on February 4, 1975, Cameron was seized by a team of Black Muslim kidnappers from the Philadelphia area as he emerged from a Harlem tavern known as the 'Midway' (Cameron, 251-3, 262-3).^{**} The

* Mulhearn - a Special Agent of the Dept. of Justice, and Garay - a N.Y.C. police officer, had been working together since 1973 in the Joint Federal-State Drug Enforcement Task Force (413-5; 57).

** It may reasonably be assumed that the arrests in the instant case, as well as the unsealing of the multi-defendant indictment, were delayed by the advent of Cameron's abduction and detention for several days.

news of that event was quickly communicated by either the police department or Federal authorities to the Joint Task Force which then entered the case by reason of its interest in Cameron's person as a now indicted drug dealer (Mulhearn, 23-6, 375-9; Garay, 420, 442). Officer Garay of the Joint Task Force got notice of the kidnapping on February 5, 1975, and told his supervisor, and his colleague Agent Mulhearn, as well as the Assistant U.S. Attorney (David DePetrìs) who had procured the sealed indictment that Cameron was in the hands of kidnappers (Garay 422-3; Mulhearn 375-7). In view of Cameron's indictment, the Joint Task Force and prosecutor wanted Cameron's "body" (378-9).

B. THE ABDUCTION OF CAMERON -
CAMERON'S TORTURE, ABUSE,
AND RELEASE ON FEBRUARY 7, 1975.

Cameron testified to the events relating to his kidnapping and detention by Black Muslims (251 et seq.). As Cameron exited from the Midway Lounge on

February 4, 1975, at about 4 a.m. with some friends, they were pounced upon by four young Black men with guns (252). Cameron's friends, although injured, escaped - but Cameron, the leanest and lightest of the group, was successfully dragged off, pushed into the well of a waiting auto, covered with a blanket, and taken to an apartment somewhere in the Bronx (252-3). There, he was blindfolded and tortured for three days and nights, while being excused periodically to make short telephone calls to relatives and friends in order to raise a ransom fund for the abductors who demanded a very large sum of money (255-6, 264). The Muslims were known killers whom he feared - and Cameron refused to testify in open court during the hearing to suppress lest he or his family be punished further for speaking out about the kidnapping incident (254-5, 263, 303-307).

The Blacks were interested in drawing out from Cameron what he knew about other drug dealers (i.e.,

Frank Lucas) on a list which they were working with, and tortured him when he claimed ignorance (256-261). When the Muslims confirmed his identity as "Swayzie" - a fact not clear to them at the beginning, and when the predators got fed up with Cameron's denials of knowledge, they let go upon him a series of outrageous brutalities (256 et seq.). They took a hot stove iron and "shoved [it] up his rectum"; they kicked him in the ribs and in the stomach; they smashed a gun butt against his head several times; they took lit cigarettes and dug them into his bare chest and naked legs seven or eight times (256-60; 262, 266, 347). They had taken off most of his clothes and his hands were kept tied behind his back; a blindfold covered his eyes (253, 265-6). The pain was agonizing, he was in terror, and he screamed; he wept (254, 259-60). The Muslims told him if he did not cooperate - and get the money together - that they would chop off his young son's hands and show

them to him (267).

In addition to these assaults and threats, from the pain and tension of the prolonged detention, Cameron's duodenal ulcer acted up (254). He vomited up what little strange (Muslim) food he was allowed (254). The flesh in his rectum came off, his head was bleeding, and he was in great pain (260, 266). He was sleepless for days from pain, fright, and fear of being killed as he slept - which was the apparent fate of another captive held at the apartment (254, 259, 264).

After being held until 5 a.m. on the morning of February 7, 1975 - when the ransom was paid - Cameron was set free near the Yankee Stadium (264, 266). Fearing for his son's life, he wanted to go to Brooklyn where the child was secreted during the period of the abduction - but he was in no shape to go by himself (265-8). He also had trouble seeing because his eyes had been taped for three days and he feared that his

sight was permanently damaged (267). He made it to the house of a Bronx friend - Sidney Hall - who agreed to drive Cameron to see his son and wife at 400 Herkimer Street in Brooklyn (266, 268-70).

C. CAMERON GETS A SPECIAL 'RECEPTION'
FROM THE POLICE UPON HIS RELEASE.

Following Cameron's abduction, the New York City police took up a vigil at the home of his sister-in-law, Mrs. Bramwell, at 400 Herkimer Street in Brooklyn where Cameron's 'wife' and child were watched over by the police and where a telephone 'command post' was set up to receive taped calls from the kidnappers (Sgt. Santise, 202-4, 214, 217-9). During the period of the kidnapping, Sgt. Santise, the officer in charge at the Herkimer Street location spoke to Lawrence Feitell, Cameron's lawyer who had telephoned on Cameron's behalf and who told Santise that Cameron had a narcotics background and that he had

a case pending on appeal (218-222). Santise told his superior, Capt. Steproe *, that he had spoken with Cameron's attorney (223). Based on Feitell's information, he concluded that drugs were a factor in the kidnapping, and he passed the word on that Cameron was 'drug-connected' (224-5).

Cameron had telephoned his wife at Herkimer Street shortly after his release and, accordingly, the police learned then that he was on his way there (Cameron, 269; Sgt. Santise, 205-6). Santise called the homicide squad for reenforcements to receive Cameron (Sgt. Santise, 206). **

Capt. Steproe was informed at his home of Cameron's release and came immediately to the 77th Squad

* Steproe set up the taped interview of Cameron at the Stationhouse after his release, but did not notify Feitell of the 'debriefing'.

** Santise explained that the kidnappers might decide to show up with Cameron!

(Steproe, 76). Steproe had been advised soon after the kidnapping that Cameron had a background in narcotics (76), and upon Cameron's release he told Sgt. Santise to have Cameron brought to the 77th Precinct (82).

In addition, Steproe gave instructions to notify all commands and units interested in Cameron from the viewpoint of narcotics that Cameron had been released, that he would be coming to the 77th Precinct and for those concerned to appear there * (100). By this device, the narcotics Task Force and Intelligence Units were notified, and "people from narcotics" showed up at his secret taping session (100-102, 105). The scene was thus set for the interception of Cameron at

* He made no arrangement to have Cameron's lawyer advised (78-9).

Herkimer Street where his wife and son were and for his deflection from there to the 77th Precinct.

D. AT HERKIMER STREET CAMERON
REFUSES TO ACCOMPANY THE
POLICE.

Cameron and his friend Sidney Hall arrived at Herkimer Street where several police officers - 7 or 8 - intercepted them with guns drawn (Santise, 206-8, 217; Cameron, 269, 272, 280). Shortly thereafter, Sgt. Santise arrived and asked Cameron to come with him to the stationhouse (Santise, 209; Cameron, 272). Cameron refused to go, stating:

"I'm just tired. I'm beat" (Santise, 209). Cameron went into a bedroom to speak to his wife and Sgt. Santise followed him inside, stating (Santise, 209):

"Come on, let's get going".

Santise acknowledged that Cameron replied:

"... I'm tired. I haven't been to sleep in two days" (210).

When Cameron refused to come with him, Sgt. Santise advised:

"Look, we spent three days here. ...
Now you are going to give us some time"
(234; emphasis added).

Cameron was separated from Sidney Hall and was placed in the back seat of a police vehicle in the company of another officer (Santise, 235; Cameron, 281-2). Hall was taken along to the Stationhouse, but in a separate vehicle (282).

Cameron's version of his treatment at Herkimer Street was not in conflict with Sgt. Santise's statements regarding their encounter there (Cameron, 269, et seq.). The more detailed texture of his testimony, however, revealed elements of coercion. Cameron testified that he refused to leave with Santise on four (4) separate occasions (276), but Santise would not take 'No' for an answer (id; 272-3, 276-7). Santise told him that the

"Statement" at the police Station would be short and he could soon be on his way (276).*

Cameron stated that he feared the police and became convinced that he had to leave with them - that he could be made to go (277). He had been stopped by the police on other occasions and he had learned previously that he could not resist police directives (274-5, 277-81).

He did not know that he was going to be held by the police for more than four (4) hours and he felt in no condition, either mentally or physically, to be interrogated (280). He had not slept in three or four nights (272) and had experienced serious injuries (supra).

* Cameron was kept at the Stationhouse for more than 4 1/2 hours - which is the approximate duration of the tape recording made there without his knowledge.

E. THE SECRET TAPING OF CAMERON.
CAMERON IS REFUSED PERMISSION
TO LEAVE. THE CONVERSATION
IS DIRECTED INTO 'NARCOTICS'.

Captain Steproe, the officer nominally in charge of the Cameron kidnapping investigation, knew of the victim's involvement in narcotics, Cameron's pending narcotics drug appeal, and other features of the case which prompted him to have word sent out to units more directly related to narcotics law enforcement to come to the 77th Precinct to audit or participate in the questioning of Cameron (73-4, 87, 100, 105, 123, 187). As soon as he entered the case, on February 4, 1975 - three days prior to Cameron's release - he started to make notes showing Cameron's relationship to the world of narcotics (Exh. G; 136, 141, 145-7). The notes reveal communication with narcotics agents prior to Cameron's release and information indicating that Sgt. Santise had told him that Cameron's lawyer, Mr. Feitell, had spoken

with Santise during the kidnapping about the bail on Cameron's appeal (146-7, 150-152, 158; Exhs. A, B). *

He noted that Cameron had been arrested for drugs and that his conviction was on appeal (154-5; Exh. C; 163-4; Exh. F) and he detailed the names of drug dealers who were associated with Cameron (165, Exh. G). He also made notes indicating communication with the Special Force Unified Intelligence on Drugs and the Joint Task Force (161; Exh. G).

Thus, when word reached him that Cameron had been released and was on his way to his sister-in-law's apartment, he gave instructions that:

- 1) Cameron should be brought to the 77th Precinct (76, 82); and that
- 2) Different units, "Intelligence Units", the "Task Force", and "interested authorities shall be notified" to come in to the 77th Precinct to participate in listening to Cameron's secretly taped interrogation (99-101; 102, 105-6, 187, 189).

In his mind, they would all be working together as a team (100-101).

* Capt. Steproe's notes appear in Cameron's Appendix at pp. 24a-70a.

As indicated above, Sgt. Santise intercepted Cameron at Herkimer Street and there induced him to come to the 77th Precinct (supra; 82). Santise and Cameron arrived at the precinct house before Capt. Steproe (84). Without Cameron's knowledge, Steproe set up a tape recording device in a room adjacent to the Sergeant's room where Cameron was questioned (85-7). He activated the machine which recorded everything that Cameron had to say in the 4 1/2 hours he was detained at the Stationhouse (Exh. 3; 90-2, 129-30). Among those present were P.O. Garay and Agent Mulhearn, the officers from the Joint Task Force, and he realized why they had come (99-100). Also present were "people from narcotics" (105). He made a list of all the federal and State agents who had come (94-6; 101-2).

The defendant did not want to be questioned and he complained that he was 'dog tired' and had not slept for days (107, 178). Steproe conceded that Cameron

had asked for permission to leave but:

"Each time I asked him to stay.
... A little longer ...". (109; 178).
(emphasis added).

Steproe was "practically pleading with him to stay a little longer"; and he offered to let Cameron "take a rest" and "refresh himself" (108). Cameron complained, "I am tired" (178). He offered Cameron coffee, cake, a roll, water; but Cameron was too sick to eat because of his stomach (108). Steproe admitted that Cameron had been "through an ordeal" (172), and that:

"We didn't want to hold him
too long" (172; emphasis added).

Nonetheless, the interrogation went on for approximately 4 1/2 hours, and Cameron's yawning several times during the tape recording he readily conceded (191-2, 194).

During the course of his interrogation, Cameron described the torture which had been inflicted upon him (190).

With respect to the identity of those who were "present during the interview of Charles Cameron",

Capt. Steproe prepared a written report which was received in evidence (153-4). This report names as those being present, among certain others, the following relevant personnel: ¹

"Spec. Agent Joseph Mulhearn
P.O. Roger T. Garay
N.Y. Drug Enforcement Task Force
Re: Frank Mathews".

F. THE TAPED INTERVIEW. CAPT. STEPPOE
ELICITS INFORMATION RELATING TO NAR-
COTICS DURING THE INTERVIEW.

Exhibit 3 on the hearing constitutes the tape recording made of the interview of the appellant Cameron.* From this lengthy interview, the prosecutor culled five excerpts which were admitted into evidence to show Cameron's involvement in the drug trade and, indirectly,

* A transcript of the Cameron interview was marked into evidence at the trial: Exhs. 153, 154, 155. The transcript will serve as an aid to the Court although it is hoped that the Court will undertake to listen to the tape recording itself.

1. See Cameron's Appendix, pp. 69a-70a.

the likelihood of his complicity in the instant case. The specific excerpts of conversations with appellant which were played to the jury are set forth in our Appendix at pp. 19a-23a . Their prejudicial import is immediately apparent. There is need, however, for the Court to review the tape recording itself (Exh. 3) and/or the transcripts thereof (Exhs. 153, 154, 155 on the Trial) in order to determine the following facts:

1. The extent to which Capt. Steproe directed the interrogation of Cameron into the area of narcotics activities of the defendant and his associates;
2. The efforts of Cameron to terminate the interrogation and the devices used by Capt. Steproe to induce appellant to remain.
3. The physical and mental condition of Cameron during the interrogation itself. As to this item, it would appear to be imperative that the Court actually listen to the tape recording itself.

G. THE TAPE RECORDED EXCERPTS
OF CAMERON'S INTERROGATION
AT THE 77th PRECINCT.

We have reproduced in the Appendix for Cameron transcripts of each portion of Cameron's interrogation at the 77th Precinct which was played for the jury. * We briefly set forth the content of each conversation.

Conversation No. 1:

In this conversation, the interrogator suggests that Cameron and his family will be prey for the kidnappers if they "find out you go in [the drug] business again". Cameron, while at first denying any past or present involvement with narcotics, states as to the amount of money needed to satisfy his abductors:

"... when I was doing business, I had that kind of money in my closet. Believe it or not. ... when I was doing business, I had what I paid them in my closet. I had that kind of money in my closet. My wife could put her hand on it just like that" (emphasis added).

* Appendix, pp. 19a-23a.

Conversation No. 2:

In this exchange, Cameron reveals how one involved in the sale of narcotics becomes knowledgeable about what is 'happening in the 'streets' with respect to threats of kidnapping and the reasons for certain shootings as they relate to drug dealers. In this connection he states, "when you are in drugs, man a big one ... you got a network of so much information, because people can come to you for favors and they know something they hit one of Frank Mathews' lieutenants." (emphasis added).

Conversation No. 3:

Here, Cameron suggests to Capt. Steproe that he has been a drug dealer: "You might think I'm a bad guy because I deal in drugs, I, I've sold drugs. You probably think I'm this and that" (emphasis added).

Conversation No. 4:

In this conversation, Cameron indicates his knowledge of the activities of the narcotics trade

in Philadelphia and the predatory methods utilized there by Black Muslims to take a "percentage" by resorting to murdering drug dealers.'

Conversation No. 5:

Here, Cameron, opines that the drug business is in its decline; "there ain't no drugs in the street". He further states that there are no new narcotics dealers coming into the trade, - "because the guys that are in it are stuck in it, but there ain't no new guys coming in".

POINT I

THE TRIAL COURT COMMITTED SUBSTANTIAL
ERROR IN DENYING CAMERON'S MOTION TO
SUPPRESS THE STATEMENTS MADE BY HIM
TO THE AUTHORITIES AFTER HIS INDICTMENT.

- a. The Case Against Cameron Was Very Close.
The Police Station Statements Supplied
the Increment of Proof Necessary to
Produce a Guilty Verdict.

The appellant Cameron was convicted of Conspiracy to sell and transport narcotics under Count I of the indictment which was the only count in which he was named. We will not here undertake an elaborate discussion of the proofs as they related to Cameron. It is clear, however, that the independent direct proof against him tending to establish membership in the conspiracy was extremely weak and that a dismissal at the end of the Government's direct case would have been in order except for some dubious proof from the witness Thomas Lee Morehead. Morehead testified that in 1969, he had once seen Cameron for about 20 minutes in an apartment in Brooklyn where Cameron demonstrated to him how properly to fold glassine

bags, and that he had seen Cameron leave the apartment with some "baggies" or sandwich bags which appeared to be empty (R. 773-780, 843, 955-6, 962, 966-7, 972).

The trial court ruled that this proof was sufficient to preclude the granting of Cameron's motion for a judgment of acquittal under Rule 29 - the proof appearing to satisfy the requirements set forth in United States v. Geaney, 417 F. 2d 1116, 1120; cert. den. 397 U.S. 1028.

Morehead's interest in testifying against Cameron to serve his own ends was brought out to the jury, as well as his lengthy criminal record, and these were features of his testimony that tended to raise serious doubts regarding his truthfulness respecting an alleged six year old incident recounting a single and very short meeting with Cameron.

The fact that the jury took three days to arrive at a verdict and that they requested a rereading of the defense summation for Cameron (which the trial court denied) indicates the degree to which the case against

him left the jury in a state of continuing doubt.

Other proof against Cameron filtered into the record, however, but none of it was of a strong or direct nature - except for his statements made at the station-house to Capt. Steproe following his release from the kidnapping described above. The skimpy nature of these additional proofs is set forth now so that this Court will be able to comprehend how marginal was the case against Cameron - except for the devastating tape recordings of his interview at the 77th Precinct.

In the nature of hearsay which won its way into the case under the Geaney rule, was the testimony of Willis Smith who stated that, on one occasion, he was driving in an automobile with Frank Mathews who told him he had a package, an eighth of a kilo, for Cameron. They allegedly looked for Cameron but could not find him. No delivery was ever made and Smith did not see what the package contained. Smith also testified that Mathews

had once directed him to visit Cameron's home and "pick up" some money owed to him. On two visits to Cameron, Smith collected a total of \$500., but he did not know why Cameron owed this money to Mathews.

A police officer named Kowalski who lived in the same building (130 Clarkson Avenue) as Frank Mathews, once saw Cameron and some other men walking out of the building. On another occasion, he saw Cameron come in to the lobby of the building, speak into the intercom in the lobby, and seemingly go up to the fourth floor where the Mathews apartment was located. At no time did he see Cameron with drugs or a package of any sort.

When Frank Mathews moved to Staten Island and built a luxurious home for himself, he invited several of his friends from Durham, North Carolina to visit him. On an intercepted telephone call Mathews was heard to invite Cameron to a cook-out along with other Durham chums. There was no proof that Cameron ever attended

the party.

On another intercepted telephone call, Barbara Hinton was discussing her "husband" Frank Mathews with her friend Lorraine Conner. Both women appeared to know of Cameron. In the course of the conversation one of the women mentioned that Cameron owed Frank Mathews \$50,000.

Still another element of proof was the listing of the name "Swayzie", Cameron's nickname, in a book of telephone numbers alleged to have been taken from a drug dealer named Donald Conner. The number listed next to the name was said to belong to a Stephanie Johnson - a woman claimed to be Cameron's girl friend.

Other proof related to credit card charges on a Master Charge Card amounting to but \$3,000. over a period of eight (8) years, and that Cameron had once been seen in an expensive automobile in Durham in 1968. The final element of proof was that the I.R.S. showed no

record of Cameron's having filed tax returns for the period from 1969 through 1974.

Cameron did not testify in his own behalf and there was no proof whatsoever that he ever possessed or sold narcotics to anyone.

It is against this background that the inflammatory proof relating to Cameron's kidnapping by Black Muslims was brought before the jury as well as his answers to the questions of the authorities at the 77th Precinct after his release upon the payment of a large ransom.

b. Cameron's Interrogation After
His Indictment Was Violative
of the Rule in Massiah v.
United States, 377 U.S. 201,
and Other Cases.

The record at the suppression hearing for Cameron establishes the following important facts:

1. Cameron was known to the police as a drug violator from the time of his kidnapping.
2. Cameron's lawyer, Feltell, spoke to the police during the course of

Cameron's kidnapping and revealed Cameron's narcotics background and pending drug appeal in order to supply a reason to the authorities for Cameron's abduction.

3. Upon Cameron's release by Black Muslims, Capt. Stepoe caused the federal and state drug enforcement agencies to be advised of his release and to attend Cameron's interrogation at the 77th Precinct.
4. Cameron was under indictment in the instant case prior to his abduction - a fact known to the Joint Task Force which prepared the case against him. Two members of that 'Force' (Garay and Mulhearn) who had worked on the federal case against Cameron, came to the 77th Precinct to listen in on his taped debriefing from an adjoining room.
5. Cameron had been tortured and abused by his kidnappers. In his debilitated condition, he was unable to resist the deceptive suasions of the police to come to the 77th Precinct to answer a "few" questions. He went there against his will as a result of deception and the refusal of the police to honor his objections to accompany them. His will was overborne.

6. Cameron was deceived into staying at the Stationhouse for an interview lasting 4 1/2 hours. He was repeatedly inveigled into staying and stopped from leaving or terminating the questioning although he was overtired, ill, and in pain.
7. Cameron was tape recorded without knowledge either that he was under indictment or that he was being secretly tape recorded.
8. The recorded interrogation of Cameron was a joint effort of the local police and the Task Force aimed at securing incriminating information from Cameron's own lips. A Federal agent who interviewed Cameron during the interrogation was falsely described as a local police officer.

Since Cameron was already under indictment in the instant case as a result of the efforts of the Joint Task Force and the United States Attorney for the Eastern District, it was improper for the 'Force' actively to collaborate with the local police in a concededly joint session which produced the damaging police station tapes reporting Cameron's involvement in narcotics and his extensive knowledge of current doings in that field. These

disclosures in Cameron's own voice tended to resolve any issue that may have existed regarding his involvement in narcotics - even if that involvement did not appear to be keyed directly into the facts of the instant case.

Capt. Steproe's testimony and his notes (Appendix, Exh. G) made it perfectly clear that Cameron was viewed as a major drug figure from the moment of his abduction and the effort to coordinate the investigation of the kidnapping with interested federal agencies concerned with drug traffic (The Joint Task Force) emerged from the very beginning. Several of Steproe's notes to himself written prior to Cameron's release show the dovetailing of Steproe's activities with the very agency which had caused Cameron's indictment in the instant case. Moreover, once word of Cameron's release reached him at home, Capt. Steproe ordered that the Joint Task Force involved in the 'war' against narcotics, and other drug

prosecution agencies, be informed and invited to listen in on a secret taping of Cameron.

Thus, it is no mere coincidence that two major figures in the Federal government's investigation of Cameron, which had already culminated in a sealed indictment against him, showed up at the 77th Precinct to listen in on several hours of Cameron's debriefing. These narcotics officers, Garay and Mulhearn, had spent two to three years working on the case against Cameron in relation to the indictment in this case which they knew had already been handed up, but was still sealed. Indeed, they claimed that they had gone to the 77th Precinct to serve Cameron with a grand jury subpoena - at the specific behest of the U.S. Attorney in charge of this case - to make sure Cameron was still in town when the indictment was unsealed (supra, pp.5-7, 19). This was admitted during the suppression hearing even though there was no intention that Cameron should ever testify before the grand jury (*id.*).

This revelation of the utilization of grand jury process for a collateral and wholly unauthorized purpose gives some insight into the level of the procedures which were found appropriate in this case. That the collaboration of Capt. Steproe with Agent Mulhearn and P.O. Garay, and the Task Force went deeper than was developed should not be surprising.

At all events, the record showed sufficiently a joinder of prosecutive efforts at every stage prior to Cameron's secret taping to make it clear that the Government was well aware of the ploy against Cameron - promoted it and expected to gain from it! All of this was done against the background of Cameron's conceded relentless torture at the hands of his Black Muslim captors, his weariness from three fear-filled and sleepless nights during which he expected execution without notice, and his continued suffering from the assaults, cigarette burnings, and rectal hot-piping to which he was subjected.

Against this background, and in view of his fear for his son's life, and the need for continued police protection - which the authorities played upon - it is not difficult to perceive how Cameron's will was overborne. His interrogation in these circumstances seems clearly to be lacking in due process, and is certainly repugnant to any standard of fairness in a civilized society (see Rochin v. California, 342 U.S. 165).

It is also apparent from a review of the 4 1/2 hour tape recording of Cameron that - as he claimed at the hearing - he sought vainly to leave the Stationhouse, only to be physically stopped or discouraged by false assertions that soon he would be on his way home (supra, pp. 16-21). Likewise, the tape recording reveals numerous instances of interrogation aimed directly at stimulating incriminatory drug-related responses, or answers pitched to elicit replies showing familiarity with current events in the world of narcotics (see [listen to] Exh. 3, - Suppression Hearing - and see

Transcript of Tape Recording Utilized by Judge Mishler). Upon the argument, counsel for the Government will hand up a transcript of the entire interview of Cameron which was utilized by Judge Mishler as an aid in reviewing the police station tape recording. In order not to attenuate this point unduly, we refer at this juncture only to the page numbers of that transcript which clearly reveal how the questioning was manipulated to deal with drug related events and narcotic personalities. Also indicated are page numbers demonstrating attempts by Cameron to cut the interview short and statements of the interrogator designed to overcome Cameron's expressed interest to depart the scene [pp. 35, 36, 45-6, 48-9, 52-6, 62, 68-72, 76, 85, 95-6, 103, 107, 109, 113, 117, 119, 126, 133, 145, 147-8, 150-4, 156, 158, 161, 169, 177-8, 184-5, 197, 200].

From all of the facts indicated above and particularly the unified and joint behavior of the prosecutorial forces involved in this case, it seems clear

that the picture presented is one of massive violation of Cameron's rights under Massiah v. United States, 377 U.S. 201. Federal and State officers comprising a Joint Task Force, and knowing full well that Cameron was under indictment, joined in a specially arranged interrogation of a weakened and harried target. While the apparent major impetus for the interrogation was a ranking Captain in the Police Department, he (Capt. Steproe) acknowledged that he knew of Cameron's drug background, and his notes showed that he had caused federal narcotics authorities to be notified of Cameron's interrogation - while completely omitting any notification to Cameron's attorney of the intended secret taping (Exh. G, Appendix, pp. 31a, 36a, 47a).

The agents of the Joint Task Force, knowing of Cameron's indictment, and bent upon profiting from an interrogation slanted to meet their investigative ends, sat in on the secret 4 1/2 hour taping of Cameron. It

is incredible that they appeared at the 77th Precinct and disclosed nothing of their purpose. Indeed, the local police had notified them of Cameron's kidnapping long before his release so that the fact of continuing collaboration among enforcement agencies cannot be gainsaid.

Cameron was indicted at the time of his 'de-briefing' so that his rights under Massiah and the 6th Amendment were operative at that time. The filing of his indictment marked the start of the adversarial proceedings against him (Kirby v. Illinois, 406 U.S. 682, 688; McCleod v. Ohio, 381 U.S. 356; United States v. Hayles, (5 Cir. 1973) 471 F. 2d 788; United States v. Frank, (2 Cir.) 520 F.2d 1287, 1290-2). Cameron's attorney had intervened with the police during the kidnapping so that his identity was known - and is noted in Capt. Steproe's notes (Exh. G, App. pp. 31a, 47a). * Upon Cameron's release, and prior to his interrogation,

* See also reference to Cameron's lawyer during the interrogation at the Stationhouse (p. 46 of transcript of Exh. 3) to be handed up on argument.

his attorney should have been notified (see United States v. Masullo [2 Cir. 1973] 489 F. 2d 217). Based upon all of the foregoing, it was serious error for the trial court to have denied Cameron's motion to suppress his Station-house statements.

POINT II

ADMISSION INTO EVIDENCE
OF CAMERON'S STATEMENTS
AT THE POLICE STATION
CONSTITUTED A GROSS ABUSE
OF DISCRETION.

Notwithstanding repeated and vigorous defense objections to the admission into evidence of Cameron's police station statements, the trial Court allowed the jury to hear tape recordings of Cameron's interview with Capt. Steproe as well as to read transcripts of vital portions of the recorded interview session (Tr. 4088, et seq.; Exh. 151, App. pp. 19a-23a). Cameron's counsel urged many grounds to thwart the introduction of Cameron's damaging post-indictment debriefing - to no avail. Chiefly, he contended that the fact of Cameron's kidnapping by Black Muslims would immediately signal to the jury Cameron's own role as drug dealer. Why else would this terroristic group seize Cameron and hold him for a ransom if it were not for a founded belief that Cameron had access to large amounts of cash through his dealings in narcotics?

The prejudicial impact of such ideation on the part of the jury could not possibly be avoided once the jury was told of the background of the kidnapping. Indeed, the Daily News was then running a series of this very subject. Moreover, the tape excerpts to be played to the jury would leave no doubt that the abduction grew out of "narcotics" and Cameron's involvement and extensive knowledge of the drug trade, drug personalities, and the operations of the Black Muslims in regard to their program of 'muscling in' on the drug trade, kidnapping narcotics dealers, executing those who resist, and exacting tribute all along the line from drug operators.

Relying upon the rule of this Circuit expressed in United States v. Deaton, 381 F. 2d 114, 117, and United States v. Bozza, 365 F. 2d 206, 213, the trial court overruled all objections raised by defense counsel. The court's ruling constituted serious and most prejudicial error since the evidence objected to stamp Cameron as a

person more than casually knowledgeable regarding the drug trade and one who, very likely, had been involved in selling narcotics - although not necessarily in connection with the instant case.

Thus, while the rule in Deaton and Bozza appears to allow for the introduction into evidence of other crimes, the rule does not sanction offers of proof "merely to show defendant's criminal character or disposition" (United States v. Deaton, [2 Cir. 1967] 381 F. 2d 114, 117). In the instant case it is difficult to perceive what rational or relevant purpose the inflammatory proof of Cameron's kidnapping was meant to serve. Likewise, his statements on tape (see Appendix, pp. 19a-23a, Exh. 151) - apart from revealing his involvement in drugs in the past - was not relevant to any of the issues developed at the trial. But, even if this were not so, and some reasonable basis for the offer of this mass of deadly material could have been spelled out, it is

beyond serious debate that the offending evidence was, nonetheless, so overwhelmingly prejudicial that it should have been screened out of the case. The exclusion of this 'evidence' would have occurred if the court had stopped to carry out the "balancing" test which the cases and authorities prescribe (McCormick, Evidence, § 190, at p. 447 et seq., espec. pp. 453-4 [2d Ed. 1972]; United States v. Bozza, [2 Cir. 1966], 365 F. 2d 206, 213-214; United States v. Johnson, [2 Cir. 1967] 382 F. 2d 280; United States v. Gardin, 382 F. 2d 601, 603-604). No such careful balancing was ever undertaken.

Where the defendant has not taken the stand, - as Cameron did not in this case - , and where the proof against him was mainly hearsay coming from the most dubious sources, his involvement in any drug conspiracy - let alone the one on trial - was scarcely established apart from his statements at the police station. It is

simply juvenile to assume that the jury was not swept away and prejudiced to the extreme by Cameron's remarks about "when I was doing business" (App. p. 19a), "I had that kind of money in my closet" (App. p. 19a). And that, "You might think I'm a bad guy because I deal in drugs, I, I've sold drugs" (App. p. 21a); as well as his account of all the killing over narcotics which took place in Philadelphia at the hands of Black Muslims (App. p. 22a); and his final statement that "no new guys coming in" to drugs and that those "in it are stuck in it" - an observation obviously borne of intimacy with facts and drug principals rather than mere speculation.

The radiation of prejudice which spilled out of the Cameron tapes presents a veritable high-water mark in the purported application of this Circuit's Deaton rule. As observed by Professor McCormick in his valuable treatise, supra, p. 454, the discretion to allow into evidence facts relating to other criminal conduct:

"implies not only leeway but responsibility. A decision clearly wrong on this question of balancing probative value against danger of prejudice will be corrected on appeal as an abuse of discretion".

Clearly, the ruling below allowing the Cameron police station tapes into evidence was an example of discretion gone rampant. A reversal of Cameron's conviction on this ground alone, in the light of the closeness of the other proof in the case, would certainly seem to be in order.

POINT III

THE TRIAL COURT COMMITTED REVERSIBLE ERROR BY ALLOWING INTO EVIDENCE PROOF THAT CAMERON HAD NOT FILED FEDERAL TAX RETURNS. THE PROFFER WAS IRRELEVANT TO THE CRIME OF NARCOTICS CONSPIRACY, INFLAMMATORY, AND VIOLATIVE OF CAMERON'S FIFTH AMENDMENT RIGHTS.

In an effort to bolster its otherwise limited proofs against Cameron, the Government offered into evidence proof that he had not filed any federal income tax returns for a few years from 1969 through 1974 (Tr. 6007 et seq.). The form of the offer was testimony from an I.R.S. clerk to the effect that a computer search of the records of the Internal Revenue Service showed no returns filed under Cameron's social security number for the years in question. The proof was admitted over defense counsel's repeated objection* that such proof was:

1. inflammatory because it revealed another crime; to wit - the failure

* Tr. 6022; 5912-5934

to file a tax return.

2. irrelevant, because it did not constitute proof of membership in the drug conspiracy on trial or even any dealings with narcotics.
3. incompetent because there was no other proof that Cameron would have been obliged to file any tax return for the years in question; and
4. incompetent because the computer search technique was not shown to have a proper foundation or was either accurate or complete.

Counsel further urged upon the court that proof of non-filing of a return by a defendant was a novelty in a narcotics conspiracy case and counsel demanded repeatedly that the Government, or the court, cite at least one case in support of the admissibility or relevance of such proof. Neither the court nor the prosecutor was able to supply a single case in support of the Government's offer. Indeed, our own exhaustive research also reveals no authority for the court's ruling that this proof was admissible and

relevant in the instant case.

While other counsel were cajoled into stipulating into the record like proof of failure to file tax returns as regards their clients, counsel herein refused to do so and tangled repeatedly with the court on this issue as is evidenced by an exchange in which counsel flatly accused the court of arm twisting.¹ The court rejoined at one point that the defendant's sentence might be affected by the attitude of counsel in refusing to stipulate to the proffer now in question, among others.² It is against this background that the court reopened the case after the Government had rested on the entire case to allow into evidence the I.R.S. proof which had been tardy in its preparation! (Tr. 5940, 5994).

It was clear and reversible error for the court to allow into the case proof that Cameron had failed to file tax returns for three or four years prior to 1975. The proof of the failure to file stood out because other defendants on trial stipulated to similar proof against their clients without even raising the question of the

1. Tr. 5919-5920

2. Tr. 36-38; 5912 et seq., 5915-5920

competence or relevance of the Government's offer to which the court forcefully sided with.

Failure to file a tax return - an omission which even attorneys are guilty of - does not indicate involvement by the non-filer in the narcotics trade. Yet, this is exactly what the proffer at trial was meant to convey. Either that - or what is equally improper - a general disregard on the part of Cameron for conformity with the requirements of law. Clearly, the proof tendered and admitted into evidence was both irrelevant and inflammatory. It fell far outside of the rule expressed in the Deaton case which we have discussed above in Point II.

But, the proof in question suffered from an even more glaring objection which the trial court chose to ignore. Simply stated, the defendant's failure to file a return was utilized to suggest to the jury that Cameron's 'tax-silence' constituted an admission of guilt

with respect to narcotics. Although the requirement to file a tax return may not be dodged simply because the facts disclosed in the return might tend to indicate criminality, a non-filer's decision to remain silent by not filing, cannot be transmuted into an implied admission of guilt for some unrelated crime. The non-filer may be prosecuted for not filing, but the fact of non-filing is not an admission or conduct constituting a consciousness of guilt with respect to dealing in narcotics (see United States v. Sullivan, 274 U.S. 259; Marchetti v. United States, 390 U.S. 39; Grosso v. United States, 390 U.S. 62). As in the case of a defendant who chooses to remain silent at a trial, or to avoid verbal disclosures at the time of an arrest, his silence cannot be transmuted into an indication of guilt. Indeed, a refusal to make testimonial or verbal disclosure may not even be adduced to the jury, for it is improper to comment either directly or indirectly upon a refusal

of a defendant to speak words or supply information of an incriminatory nature (see Griffin v. California, 380 U.S. 609).

By its decision in United States v. Sullivan, 274 U.S. 259, the Supreme Court has indicated that the compulsion to file a tax return, while testimonial, does not immediately involve Fifth Amendment values. That being so, and by a parity of reasoning, the failure to file a tax return should not be open for urging as an implication of guilt for other crimes. Recalcitrance which is testimonial is not open to comment suggesting that the avoidance is based upon considerations of criminality or guilt (see Griffin v. California, 380 U.S. 609).^{*} To urge that failure to file a tax return implies guilt of some other crime is to contradict the very premise which compels filing - namely that the mere filing of a return is not experientially connected to the revelation of crime.

^{*} see also U.S. v. Hale, 422 U.S. 171; Johnson v. U.S., 318 U.S. 184; Grunewald v. U.S., 353 U.S. 397; and espec. Shepherd v. U.S., 290 U.S. 96, 104.

Insofar as the Government, in its effort to show unexplained wealth of the defendants, may have relied upon a series of cases including United States v. Falley, 489 F. 2d 33, and United States v. Tramunti, 513 F. 2d 1087, 1104, none of these are apposite to the question raised under this heading. These cases and their progeny have to do with the sudden acquisition of large amounts of money for which no reasonable explanation has been offered.

While on this subject, and based upon the Tramunti and Falley cases, supra, we complain that the trial court also erred in allowing into evidence proof that Cameron held a Master Charge card which showed billings of a mere \$3,000. over a period of seven (7) years, or that on a few occasions Cameron was seen in an expensive car. It was not established that Cameron owned any of the vehicles in question. These matters were not of sufficient stature alone or together to be urged to the jury as showing that Cameron

had such large amounts of cash available to him as would be indicative of trafficking in narcotics. Indeed, the amounts that could arguably be involved - even if automobile ownership had been established, which it was not * - were paltry. In the cases on the subject of unexplained acquisition of large amounts of cash, the sums involved were truly large and of a sort which could be construed as a basis for assuming that such monies represented either the by-product of drugs or the wherewithal to deal in narcotics in a manner described by the proofs (United States v. Tramunti, 513 F. 2d 1087, 1109; United States v. Bynum, 360 F.S. 400, 418; United States v. Manfredi, 488 F. 2d 588, 597, cert. den. 417 U.S. 936). The trivial amounts of money allocable to Cameron, even on the most lenient view, do not in any way support a thesis of narcotics involvement.

* Tr. 2414

The sparse and limited nature of Cameron's provable expenditures during the life of the conspiracy actually negated his involvement in it. Still, the court tendered the proof of his expenditures as though they supported the thesis of conspiratorial membership. This constituted a serious warping of the proof - and gave undue judicial support to the government's argument that the failure to file tax returns likewise implied guilt and was bound up in some way with the issue of the source of Cameron's income. To our mind, these phenomena were logically unrelated. Nonetheless, inference was piled upon inference! In the end, the jury was improperly invited to speculate that Cameron's relatively limited expenditures and failure to file returns exemplified an involvement in the narcotics trade. The lack of logic in the offer does not mean that the suggestion was rejected by the jury. Indeed, the verdict against Cameron can only be interpreted as indicating

that the arguments made actually struck the mark. Where, as in this case, the potential for prejudice and the risk of confusion was so great, both the proof of non-filing and the evidence of Cameron's relatively small expenditures should have been screened out of the case (Shepherd v. United States, 290 U.S. 96, 104).

POINT IV

THE APPELLANT CAMERON ADOPTS ALL ISSUES AND ARGUMENTS
RAISED BY CO-APPELLANTS AS IF FULLY SET FORTH HEREIN.

Pursuant to Rule 28 (1) of the Federal Rules
of Appellate Procedure, the appellant Charles William
Cameron adopts all issues and arguments raised by co-
appellants as if fully set forth herein.

CONCLUSION

The judgment of conviction of the appellant
Charles William Cameron should be reversed.

Respectfully submitted,

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**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

**UNITED STATES OF AMERICA,"
Appellee,**

- against -

**CHARLES WILLIAM CAMERON,
Appellant.**

Index No.

Affidavit of Personal Service

STATE OF NEW YORK, COUNTY OF

NEW YORK

ss.:

I, Reuben A. Shearer being duly sworn,
depose and say that deponent is not a party to the action, is over 18 years of age and resides at
211 West 144th Street, New York, New York 10030

That on the **1st** day of **April** 19 **76** at **225 Cadman Plaza, Brooklyn, New York**


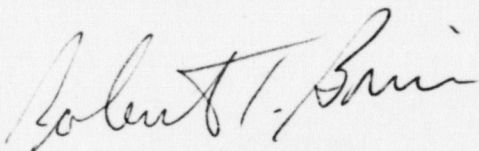
deponent served the annexed **Appendix Brief**

upon

David Trager

the **Attorney** in this action by delivering ² a true copy thereof to said individual
personally. Deponent knew the person so served to be the person mentioned and described in said
papers as the herein,

Sworn to before me, this **1st**
day of **April** 19**76**


Reuben Shearer

ROBERT T. BRIN
NOTARY U.S.C. State of New York
No. 31 0418950
Qualified in New York County
Commission Expires March 30, 1977

